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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Criminal Appeal No.264/2003

APPELLANT Raj Kumar alias Kashiram Son of Darshan Lal Tiwari (Brahman Tiwari) aged 35 years, at present 37 years, resident of Village Kotari P.S. Lormi, District Bilaspur (Chhattisgarh)

Versus

RESPONDENT State of Chhattisgarh, through District Magistrate, Bilaspur (Chhattisgarh)

CRIMINAL APPEAL u/s 374 OF THE CODE OF CRIMINAL PROCEDURE

D.B.: HON'BLE SHRI L.C BHADOO, J, &
HON'BLE SHRI SUNIL KUMAR SINHA, J.

ORAL JUDGMENT
(17.09.2007)

L.C. Bhadoo, J:-

Shri Kamal Pandey, counsel for the appellant.

Smt. Anju Ahuja, Dy. Advocate General for the State.

Heard.

This appeal is directed against the judgment of conviction and order of sentence dated 24th December 2002 passed by the Second Additional Sessions Judge (FTC), Mungeli, District - Bilaspur in Sessions Trial No.46/2001, whereby, the learned

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Second Additional Sessions Judge after holding the accused/appellant – Raj Kumar alias Kashiram, guilty of the offence punishable under Section 302 of the IPC sentenced him to undergo imprisonment for life and to pay a fine of Rs.5000/-, in default of payment of fine to further under R.I. for 2 years. He was also convicted under Section 328 of the IPC and sentenced to undergo R.I. for 7 years and to pay a fine of Rs.2000/-, in default of payment of fine to further undergo R.I. for 1 year. It was also directed that both the sentences shall run concurrently. However, co-accused –Lata Bai has been acquitted of the charge under Section 302, in alternative Section 302 read with Section 34 and 328 read with Section 34 of the IPC.

Case of the prosecution in brief is that Alka Bai, a widow (since deceased), was residing in the adjoining house of Sardha Yadav (PW-1). Lata Bai (co-accused) was also a widow. On 21.10.2000, Panchram, a resident of Kotri gave merg intimation (Ex.P/17) in respect of death of Alka Bai. The said intimation was registered by the Head Constable – Bhairav Prasad Mishra (PW-10) as Merg No.44/2000. Thereafter, on 23/10/2000 , the Head Constable gave Dehati first information (Ex.P/19) in the Police Station, Lormi, based on that, First Information Report (Ex.P/19-A) was registered. The initial investigation was conducted by Bhairav Prasad Mishra and thereafter by Investigating Officer, S.I. Narendra Pujari (PW-12). During the course of investigation, Bhairav Prasad Mishra gave notices Ex.-

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

P/1 and Ex.- P/1 A to the Panchas and prepared inquest (Ex.-P/2) on the body of Alka Bai. He also lifted the remains of vomiting of Alka Bai under Ex.P/3. Site Plan (Ex.P/5) was prepared by Halka Patwari. Body of Alka Bai was sent for postmortem examination to the Community health Centre, Lormi under Ex.P/7, where Dr. R.K. Agrawal, (PW-3) conducted the postmortem and opined that the cause of death was asphyxia due to some suspected poisoning. Viscera were preserved and handed over to the Police for getting it examined. The postmortem report was prepared under (Ex.P/8). Lata Bai was examined and no injury was found on her body. Accused – Raj Kumar was also medically examined, no injury was found on his body and report (Ex.-P/12) was prepared. On the request of S.H.O., Police Station, Lormi, Dr. R.K.. Agrawal (PW-13) gave report that viscera of Alka Bai and twins foetuses are preserved and there is a case of suspected poisoning. The age of the foetuses were about 6-7 months. He gave his report (Ex.-P/14). During the police custody, accused/appellant – Rajkumar gave memorandum (Ex.P/15), in pursuance of that, one plastic container was seized containing 8 tablets of Aluminum Phosphate (Sulphas) under Ex.P/16 . The seized articles were sent for chemical examination to Forensic Science Laboratory, Sagar from where report (Ex.-P/27) was received. As per the said report, in the viscera of Alka Bai, tablets of sulphas, which were seized at the instance of the accused/appellant, as also the

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 4	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

vomiting, which was lifted from the place of occurrence, were containing Aluminum Phosphate (Sulphas).

After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Mungeli, who in turn committed the case to the Sessions Judge, Bilaspur, from where, the learned Second Additional Sessions Judge (FTC), Mungeli received the case on transfer for trial.

The prosecution in order to establish charge against accused persons namely Raj Kumar and Lata Bai examined 12 witnesses. The statements of the accused persons was recorded under Section 313 of the Code of Criminal Procedure, in which, they denied the material appearing against them in the prosecution evidence and stated that they are innocent and has been falsely implicated in a case on account of animosity in connection with Panchayat Elections.

The learned Additional Sessions Judge after hearing the counsel for the respective parties convicted and sentenced the accused – Raj Kumar as aforementioned and acquitted the co-accused – Lata Bai.

We have heard Shri Kamal Pandey, Counsel for the appellant and Smt. Anju Ahuja, Dy. Advocate General for the State.

As far as involvement of the accused in crime in question is concerned, there is no ocular or direct evidence to connect the accused with the crime in question. The whole case rests on the

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आदेश पत्रक (पूर्वानुबद्ध)

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circumstantial evidence. As per the settled law, in order to convict an accused based on the circumstantial evidence, the Hon'ble Apex Court in the matter of **Sharad Birdhichand Sarda vs. State of Maharashtra, AIR 1984 S.C. 1622** held that the following conditions must be fulfilled before a case against an accused based on circumstantial evidence can be said to be fully established ;

1. the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must or should' and not 'may be' established.

2. the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

3. the circumstances should be of a conclusive nature and tendency.

4. they should exclude every possible hypothesis except the one to be proved, and

5. there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

A case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on pure moral conviction.

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आदेश पत्रक (पूर्वानुबद्ध)

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In the present case, the prosecution has tried to connect the accused with the crime in question on the following circumstances :

1. That Alka Bai died on account of administration of poison i.e. Aluminum Phosphate (Sulphas).
2. Deceased – Alka Bai had made oral dying declaration.
3. That 8 tablets of Aluminum Phosphate (Sulphas) were seized at the instance of the accused.
4. That accused – Raj Kumar had physical relations with Alka Bai, as a result of which, she became pregnant and she at the advanced stage of pregnancy approached Dr. (Smt.) M.T. Minj (PW-9) and Snehlata Pandey (PW-11) for abortion.

The accused – Raj Kumar had also accompanied her to meet Snehlata Pandey (PW-11). When Dr. Minj and Snehlata Pandey apprised Alka Bai that now being advanced stage of pregnancy, it is not possible to abort the child, she threatened the accused that she will convene a Panchayat and will disclose this fact before the Panchayat. The accused in turn threatened her that he will not leave her alive if she disclosed it.

First Circumstance

As far as this circumstance is concerned, in the first instance, Sardha Yadav (PW-1) and Panchram (PW-5) have stated that on 21.10.2000, Alka Bai had died. When Sardha

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Yadav came to know about the ill-health of Alka Bai, he went near her house, where 2-4 persons were standing, he saw that Alka Bai was writhing in pain and she was saying to him to save her, on which, he enquired from her as to what had happened to her and she disclosed that Lata Bai has given some poison mixed with jaggery. She further disclosed that Rajkumar @ Kashiram had physical relations with her, therefore, she has become pregnant and she died on the spot. Shri Bhairav Prasad Mishra, Head Constable (PW-10) has stated that on 21/10/2000, he went to village – Kotri for investigation in connection with Merg No.44/2000 of Alka Bai. On that day, he collected the remains of vomiting of Alka Bai from the place of occurrence under Ex.P/3 and thereafter, the body of Alka Bai was sent for postmortem under Ex.P/7 to the Community Health Centre, Lormi. PW-3 – Dr.R.K. Agrawal has stated that on 22.10.2000, in the evening, he conducted postmortem on the body of Alka Bai, viscera were preserved and sent for chemical examination. There were twins foetuses aged about 6 -7 months in the womb of Alka Bai and as per his opinion, she died on account of consumption of poison.

Investigating Officer, A.S.I. Narendra Pujari (PW-12) has also stated that the seized articles were sent for chemical examination under Ex.P/25 and Ex.P/26 to Forensic Science Laboratory, Sagar from where report (Ex.-P/27) was received. A perusal of the FSL report reveals that in the viscera and

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vomiting of Alka Bai, the contents of Aluminum Phosphate (Sulpahs) was present. Therefore, in view of the above evidence, it is established that Alka Bai had died on account of poisoning.

Second Circumstance

So far as this circumstance is concerned, PW-1 -Sardha Yadav has stated that on 21.10.2000, when he came to know about the ill-health of Alka Bai, he went to her house and saw 2-4 persons standing there. Alka Bai was writhing in pain. Alka Bai was saying him to save her. On enquiry, she stated that Lata Bai has given something mixed with jaggery. She further stated that the accused – Raj Kumar @ Kashiram had physical relations with her, on account of which, she became pregnant. PW-5 – Panchram has corroborated the above evidence of Sardha Yadav and stated that Alka Bai made oral dying declaration regarding her death that Lata Bai had given her something mixed with jaggery. PW-2 – Kheeruram has also stated that Alka Bai made oral dying declaration that Lata Bai has given to her something mixed with jaggery. PW-6- Rajjulal even though has been examined regarding oral dying declaration, but he has not supported the prosecution.

In view of the evidence of these witnesses, administration of something mixed with Jaggery by Latabai is established and as per discussion on the first point, it has been held that Alka

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Bai was administered with Aluminum Phosphate (Sulphas) and she died on account of poisoning.

Third circumstance

As far as this circumstance is concerned, 8 tablets of Aluminum Phosphate (Sulphas) contained in plastic container, were seized at the instance of the accused/appellant. The prosecution has examined Swaroop Das (PW-4) and Narendra Pujari (PW-12). PW-4 – Swaroop Das has stated in his examination-in-chief that on enquiry from Raj Kumar, he disclosed to the police that the tablets have been kept in the sugarcane field under a tree in a plastic container. The Police alongwith the accused went to the said place, where, Raj Kumar brought the plastic container and gave it to the police, which was seized. Memorandum (Ex.P/15) and seizure (Ex.P/16) bears his signature, but in the cross-examination he has stated that only 5 persons i.e. he alongwith S.H.O., Head Constable, Panchram and Manglu Sahu went to the field, where 4-5 trees were standing, but he cannot say how many trees were there. The trees were standing on the *Medh* in the field. It is correct to say that the police persons brought the plastic container in the village, where the papers were written and that was not read over to him. He further stated that the S.H.O. read over the same to him, but now, he is not in a position to tell what he read. In cross-examination of this witness, he has categorically stated that the plastic container containing the tablets was

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 10	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

brought by the police. There is no clear or direct evidence to show that in fact, the accused/appellant went to the place where the plastic container was concealed or he pointed out the place and at his instance the container was seized by the police, therefore, the evidence regarding recovery of plastic container at the instance of the accused/appellant is not established.

The Investigating Officer, A.S.I. Narendra Pujari (PW-12) has stated that on 24.10.2000, he made enquiry from the accused and prepared Memorandum Ex.P/15, which bears his signature between 'B' to 'B' and between 'C' to 'C' signature of Raj Kumar was taken. He seized the plastic container containing Aluminum Phosphate (Sulphas), which is Ex.-P/16. The above evidence of Narendra Pujari does not satisfy the requirement of Section 27 of the Evidence Act because he has not clearly stated that what information regarding place and plastic container was given by the accused to him. He has further not stated that in fact, the place from where the plastic container was seized was pointed out by the accused, therefore, this recovery cannot be held to be made at the instance of the accused. On the contrary, this Investigating Officer has stated that the accused produced the plastic container, but he has not stated that from where he brought the said container and produced before him. There is no independent witnesses regarding memorandum and recovery at the instance of the accused/appellant, therefore, the whole

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 11	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

recovery at the instance of the accused/appellant becomes doubtful.

Fourth Circumstance

As far as this circumstance is concerned, it is established from the dying declaration of Alka Bai to Sardha Yadav (PW-1) , Kheeruram (PW-2) and Pancharam (PW-5) that she became pregnant on account of physical relations with Rajkumar. Moreover, Snehlata (PW-11) to whom the deceased went for abortion has stated that Alka Bai came to her for abortion of the foetus and she disclosed to her that the foetus in her womb is from physical relations with Kashiram. PW-7 – Santosh Pandey has also stated that Alka Bai disclosed that the foetus in her womb is of the accused – Raj Kumar. Santosh Pandey (PW-7) further stated in para 3 that when Alka Bai was informed by PW -11 – Snehlata that it is not possible to abort the foetus of Alka Bai, Alka Bai said that if the foetus is not aborted, she will convene a Panchayat, disclose the name of accused/appellant to the Panchas that she became pregnant on account of physical relations with accused/appellant. Though the accused said to Alka Bai that if she will disclose his name in the Panchayat, then he is not going to leave her alive and the very next day, on account of the administration of the poison, Alka Bai died. Therefore, it is established that accused had physical relations with Alka Bai, on account of which, she became pregnant and when Alka Bai was informed that it is not possible to abort the

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foetus, she threatened the accused that she will convene a panchayat and will disclose his name, upon which, the accused threatened her that if she is going to tell his name, he will not leave her alive.

From the above discussions of point Nos.1, 2 & 3, it is clear that the prosecution has not adduced any evidence to establish that (i) accused was in possession of poison (ii) that the poison was given by him to Lata Bai and Lata Bai administered the poison to Alka Bai at the instance of the accused, because as per the decision of the Apex Court in the matter of **Sharad Birdhichand Sarda (Supra)** to connect the accused with the crime on the basis of administration of poison, the prosecution is required to establish that

(1) there is a clear motive for an accused to administer poison to the deceased.
(2) that the deceased died of poison said to have been administered.
(3) that the accused had the poison in his possession.
(4) that he had an opportunity to administer the poison to the deceased.

On the basis of foregoing discussions, it is established that Alka Bai died on account of administration of poison. Even the accused had the motive, because when Snehlata refused for abortion of Alka Bai saying that being the advanced stage of

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pregnancy, it is not possible to abort the feotus, Alka Bai said to the accused that she will convene a Panchayat and will expose the fact that she became pregnant on account of physical relations with him. Thereafter, the accused threatened her that if she is going to do it, he will not leave her alive. But the prosecution has failed to establish other two points i.e. the accused had poison in his possession and the prosecution has failed to establish this 4th point that the accused had an opportunity to administer the poison.

Therefore, in view of the foregoing reasons, the prosecution has not been able to complete the chain of circumstances in order to establish the crime against the accused. The chain of the circumstance is not complete, because the prosecution has not been able to establish that the accused was in possession of the poison i.e. Aluminum Phosphate (Sulphas), that Lata who administered the Sulphas mixed with jaggery to Alka Bai was at the instance of the accused, therefore, we are of the considered opinion that the accused is entitled for benefit of doubt as prosecution has not been able to establish the crime against the accused beyond reasonable doubt.

The judgment of the trial Court convicting and sentencing the accused/appellant for commission of the offence under Sections 302 and 328 of IPC cannot be sustained.

In the result, the appeal succeeds.

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	The accused/appellant is acquitted of charges under Sections 302 and 328 of the IPC. He be set at liberty forthwith, if not required in any other case, because as per the order of the trial Court, the accused is in detention since 25.10.2000. Sd/- L.C.BHADOO Judge Sd/- Sunil Kumar Sinha Judge	

Shyna